

## MINUTES

### **INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA**

**May 16, 2003**

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on May 16, 2003 at the Marriott Las Palmas in Rancho Mirage, California.

The following members were present in person:

Julia Gibbs  
Rob Harris  
Kathy Phelps  
Tom Phinney  
Tracy Schweitzer  
Geraldine Valdez  
Wes Avery (guest)  
Mike Cook (guest)

The following members attended telephonically:

Molly Baier  
Peter Bronson  
Mike Buckley  
Lynn Ernce  
Bob Franklin  
Sandy Lavigna  
Mark Porter  
Dan Schechter  
Dave Shemano  
Cliff Stevens

Rob Harris called the meeting to order at 10:45 a.m.

**1. Approval of Minutes: April 4, 2003.**

The minutes of the April 4, 2003 meeting were approved unanimously.

**2. Formation of Subcommittees, volunteers, election of vice chairs.**

The Committee continued its discussion concerning the formation of subcommittees, solicitation of volunteers for committees, and possible election of separate vice chairs for legislation, education, publications, and constituency/outreach/website.

First, it was noted that various members had expressed interest in heading or serving on committees, including Geraldine Valdez (education), Molly Baier (education, with occasional work on legislation), Bob Franklin (in order of preference: constituency, publications, education, legislation), and Mark Porter (education, publications, legislation). Judy Gibbs expressed opposition to the concept of forming subcommittees to be headed by multiple vice chairs. There was some discussion about the perceived benefits and disadvantages, and the discussion was tabled to the next meeting. Rob Harris asked that anyone interested in heading or serving on one or more of the committees – if the concept is adopted – should contact Rob via e-mail.

### **3. Programs.**

A. Discussion of the ethics program presented at the Spring Meeting was tabled due to Tom Phinney's absence.

B. The Committee discussed the status of development of our program for the State Bar Annual Meeting. Judy Gibbs will send an e-mail memo to Rob, Geraldine, and/or Michael Mullen to make certain the program information appears on the section's web site, and that there is a link to the Annual Meeting signup page. Rob also said an e-mail blast should be sent at the appropriate time, inviting the recipients to attend the program and the Annual Meeting. Mark suggested that the family law sections of state and local bar associations also be informed about the program.

C. There was discussion about the possibility of presenting a joint program with the ABA at its San Francisco meeting in July 2003. Sandy Lavigna reported that it is too late to set such program for this year, but that she will follow up with Kate Heidt with a view to seeking to present a joint program in 2004.

D. The Committee discussed the various possible program topics for the State Bar 2004 Spring Meeting that had been discussed at the April 4 meeting. Rob said we probably can present two programs, and possibly three. Those interested in presenting programs were asked to prepare short program descriptions, so a decision can be made at the June 20 meeting. With regard to Item 3 on the April 4 topic list ("When Fraud Is an Element of a Bankruptcy Case"), Tracy Schweitzer agreed to work with Sandy. Item 5 ("DIP Financing") will not be considered for the Spring Meeting.

### **4. New Members.**

There was discussion concerning recruitment of new members and appointment of an early replacement for Kathy Phelps, who will be taking maternity leave before the expiration of her term.

Mark Porter has applied to continue as a member, and an application is expected from Colin Wied. The Committee approved a motion to replace Kathy with Howard Kollitz, her partner at Danning Gill *et al.*, with one negative vote (from Judy, who said she opposes the concept of a firm having a "seat" on the Committee).

**5. Website Report and Constituency Outreach Project.**

A. E-Mail Lists and Reciprocal Announcements.

Reports on members' efforts to obtain e-mail lists from various bar groups were updated, as follows:

San Diego: Radmila Fulton has e-mailed the San Diego list to Rob.

Beverly Hills: Peter Bronson reported that while the Beverly Hills Bar Assn. had declined to provide a membership list for its bankruptcy section, the Beverly Hills Bar had circulated an e-mail to its Bankruptcy Section members, inviting them to "opt onto" our constituency list. As of May 9, 2003, 20 have signed on.]

San Francisco: Mark reported that the Bar Assn. of San Francisco had turned down his request for a membership list. The chair of the commercial law and bankruptcy group will be informed about the availability of the constituency list.

Sacramento and ABI: Judy has provided the ABI list.

Central California: Cliff Stevens reported that the board was willing to send out some sort of "permission slip" to enable interested persons to "opt in".

South Bay: Rob reported that he is going through the membership directory and adding the names himself.

B. E-mail To Be Sent to Lists for Uncooperative Local Bars.

Bob will compose an e-mail, based loosely on the Beverly Hills Bar model, that would enable interested persons to add their names to the constituency list easily.

C. Report on Status of Website, Content.

This topic was tabled to the next meeting. In the interim, members should e-mail Mike Buckley and Geraldine with any input.

D. Status of Migration of BLS Website to State of California Site.

**6. Progress Reports on Current Projects.**

A. A.B. 182 –Automatic Re-Indexing of California Exemptions.

It was reported that a hearing on A.B. 182 before the Senate Judiciary Committee had been set for June 10, 2003. No opposition is expected at this point.

B. Status of Badges of Fraud A.L.P.

Dan Schechter gave a brief synopsis of the status of this project, and thanked Judy for having contributed a huge amount of work to it. Dan said that essentially, this proposal would restore the uniformity of the UFTA to the California version by referring to actual fraud. He said that as Professor Kennedy had predicted, courts are finding the badges of fraud irrelevant in a fraudulent transfer action because they are relegated to the commentary and do not appear in the statute. Dan said the statute will be less confusing if the consistency with the uniform act is restored. There was discussion regarding how the process will ensue following approval. The ALP was then unanimously approved, as modified by Rob's comments.

**7. New Projects.**

A. CCP § 697.530 – Problem of Perfecting California Lien on Assets of Foreign Corporation.

Discussion was tabled to the next meeting.

B. A.B. 690 – Bank Designation of Central Address for Service.

Molly reported that this bill does not appear controversial. It has passed the Assembly unanimously, and is now before the Senate. Molly's proposed Legislative Comment was unanimously approved for submission to the Executive Committee.

**Note: The remainder of the minutes was kindly taken by Tracy Schweizer as secretary pro tem.**

C. Discussion of H.R. 975.

This bill is not expected to come to a vote until June. Rob will submit a Legislative Comment on the attorney liability provisions.

D. Continuing Discussion of C.C.P. § 708.110 et seq. (Secret Liens and Registering the Same).

Discussion was tabled to the next meeting.

**8. Publications.**

A. Status Report on Article for Business Law News (draft due 5/8/03, final 6/3/03).

Rob said it is anticipated that this article will be completed over the summer. Dan said he wants to prepare something of current interest, but is concerned that it will be historic when finally published. Rob said there is no current deadline, but will contact Dan for further discussion. Rob said there is no Annual Review pending.

B. California Legislative Bulletin.

Geraldine is taking responsibility. Discussion was tabled.

**9. Legislative Liaisons' Report.**

A. State: Conference of Delegates Resolutions.

Rob will e-mail Jerry Grossman and report that the Committee has no comment at present.

B. Federal.

Rob will contact Lisa Fenning to make certain that she is prepared to make a presentation at the next meeting.

**10. Other New Business – Franchise Law Committee ALP.**

The Committee decided not to make any comment on this proposal.

**11. Next Meeting.**

The next meeting will take place June 20, 2003 in Tom Phinney's office in Sacramento.

**12. Meeting adjourned.**

The meeting was adjourned at approximately 12:30 p.m.

Peter Bronson  
Secretary